

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 8139 of 2007(R)

PETITIONER:

**V.M.VIJAYAN, S/O.K.M.MADHAVAN,
(RETIRED DISTRICT MANAGER), KERALA FINANCIAL
CORPORATION), 'USHUS', MANJOOR SOUTH P.O.,
MANJOOR VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT.**

BY ADV. SRI.T.A.SHAJI

RESPONDENTS:

- 1. KERALA FINANCIAL CORPORATION,
H.O.VELLAYAMBALAM, THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING DIRECTOR.**
- 2. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, FINANCE DEPARTMENT,
THIRUVANANTHAPURAM.**

**BY ADV. SRI.U.K.RAMAKRISHNAN ---SC FOR R1
SMT.P.VIJAYAMMA
SRI. KRISHNA MENON**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 8139/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE COMMUNICATION DT. 14/08/06 RECEIVED BY THE PETITIONER.

EXT.P2. COPY OF THE REQUEST DT. 13/2/2007 SENT TO THE DIST. INFORMATION OFFICER OF THE R1 BY THE PTR.

EXT.P3. COPY OF THE COMMUNICATION DT. 23/2/2007 BY THE R1.

EXT.P4. COPY OF THE REPRESENTATION DT. 5/3/07 BY THE PETITIONER BEFORE THE R1.

EXT.P5. COPY OF THE COMMUNICATION NO. PSL/1270/07 DT. 2/4/07 BY THE R1.

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE LETTER DT. 20/4/2005 BY THE DIRECTOR, VIGILANCE & ANTI CORRUPTION BUREAU, TRIVANDRUM.

EXT.R1B. COPY OF THE LETTER DT. 31/10/05 BY THE R1 TO THE DIRECTOR, VIGILANCE & ANTI CORRUPTION BUREAU, TRIVANDRUM.

EXT.R1C. COPY OF THE LETTER DT. 7/2/2006 SENT BY THE DIRECTOR VIGILANCE & ANTI CORRUPTION BUREAU, TO THE R1.

EXT.R1D. COPY OF THE REPORT DT. 11/10/2006.

EXT.R1E. COPY OF THE LETTER DT. 10/12/2006 BY THE R1.

EXT.R1F. COPY OF THE LETTER DT. 13/06/2003 OF THE DIRECTOR, VIGILANCE & ANTI CORRUPTION BUREAU, TRIVANDRUM.

EXT.R1G. COPY OF THE PROCEEDINGS DT. 23/06/2003.

EXT.R1. COPY OF THE LETTER DT. 17/1/2005 OF THE VIGILANCE (D) DEPARTMENT, GOVT. OF KERALA, THIRUVANANTHAPURAM.

True copy

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V.GIRI, J.

W.P.(C).No.8139 of 2007 R

Dated this the 28th day of September, 2007.

JUDGMENT

The petitioner retired from the Kerala Financial Corporation as District Manager on 31.01.2005. His grievance is that the retirement benefits due to him, by way of gratuity and management's contribution of Provident Fund, has not been disbursed to him, so far.

2. In the counter affidavit filed by the Corporation, the only reason cited for non-disbursal of the said retirement benefits is that a case was registered in the Vigilance and Anti-Corruption Bureau Police Station, Thrissur on 27.1.2005 under the Prevention of Corruption Act as also under the Indian Penal Code against the petitioner and several others involving allegations of unauthorized and illegitimate disbursal of loans, which ultimately could not be recovered by the Corporation. The contention is, therefore, that loss has been caused to the Corporation by the writ petitioner and others.

3. Reference is made in the counter affidavit to Ext.R1 (c), a communication by the Director of Vigilance and Anti-corruption Bureau, Thiruvananthapuram intimating the Managing Director of the Kerala Financial Corporation, that the investigation

of the case is in progress and the investigation so far conducted in the matter reveals that the accused in the case has active involvement in the commission of offence.

4. In paragraph 10 of the counter affidavit, reference is made to the fact that two other employees of the Corporation, who were also implicated in the Vigilance case, were given their retirement benefits after getting indemnity bonds executed by them.

5. I heard learned counsel for the petitioner Sri.T.A.Shaji and Mr.Krishna Menon for the Kerala Financial Corporation.

6. Learned counsel for the petitioner contends that the Vigilance case registered against the petitioner and others are still pending investigation. The court is yet to take cognizance of the offence as against the accused. There is no indication as to when the trial of the case will be over. No Rule applicable to the employees of the Corporation is produced to show that they are ineligible for any pension. There is no legal hurdle in releasing the retirement benefits to the petitioner. Non-disbursal of the retirement benefits, according to the counsel for the petitioner, causes serious prejudice to the petitioner.

7. I am constrained to take note of the fact that no liability as such has been quantified as against the petitioner. No doubt, the Kerala Service Rules are not applicable to the employees of the Financial Corporation. But the principle that the liability, if any, incurred by any employee, as far as possible, should be quantified prior to his retirement, will naturally apply to all cases. Such determination or quantification has not been done. Significantly, the employees of the Corporation are not eligible for pension on retirement. The benefits that are due to an employee as retirement benefits become very dear and valuable. There is no justification in continuing to withhold the same as such. If any liability has been determined, then the amount can be recovered from the money payable to the retired employee, provided the same is permissible in law. There is no such fixation of liability in the present case.

8. It is also noteworthy that the Vigilance case registered against the petitioner and others is even now pending. Two other employees have been given their benefits after getting indemnity bonds from them.

In the circumstances, the writ petition is disposed of directing the 1st respondent to disburse to the petitioner the retirement benefits due to him by way of gratuity and

management contribution of Provide Fund within a period of two months from the date of receipt of a copy of this judgment. Such disbursal shall be on condition that the petitioner executes an indemnity bond as prescribed by the Stamp Act, undertaking to indemnify the Corporation of any loss that may be found to have caused by the petitioner, after due adjudication. It is made clear that the right of the Corporation, to take independent proceedings to recover any loss that has been caused by the writ petitioner is left in tact. The contention of the petitioner as regards his right to recover interest from the Corporation for the alleged delayed payment is also left open.

Sd/-
(V.GIRI)
JUDGE

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